

REMARKS

In response to the March 19, 2010 Office Action the Applicants hereby make the above noted amendments, present the above new Claims, and advance the below Remarks, which are believed to place the Claims in a condition for allowance.

CURRENT AMENDMENTS AND NEW CLAIMS

Claims 1 to 12 were previously pending. New Claims 13 to 17 are added. Claim 1 is independent and all Claims are directly or indirectly dependent thereon. The present amendments substantively amends Claims 1, 6, 7, and 8 and corrects informality of antecedent basis and spelling in Claims 4 and 11 respectively.

By these amendments and the addition of new Claims, the Claims herein as currently amended conform verbatim to the European Patent Office examined and allowed Claims 1 to 17 in Applicant's counterpart European Patent Application No. 05722908.

The amendments and newly added Claims raise no issue of new matter. Claim 1 is amended to include a modified stating of the "arcuate liner" subject matter of original Claims 6 and 8 wherein, the liner is defined as **having an arcuate inner surface, a lower portion of the arcuate inner surface extending radially inward allowing the arcuate surface to extend inwardly below the container neck crown when the closure is applied to the container.** The amended language of Claim 1 is supported by original Claims 6 and 8 and paragraphs 0009, 0010, 0037 of the specification. Claim 1 is also amended to change the term "sealing bead" to "locking bead" consistent with the terminology of original Claims 9 and 10. Claim 6 is now amended to be dependent upon Claim 1 and states the top further includes a central well and a surface closing said well. The amended language of Claim 6 is supported by Fig. 5 membrane 52 and paragraph 0058 of the specification and/or Fig. 8 plug 55 and paragraph 0062 of the specification. Claim 7 has its

dependency now changed to amended Claim 1. Claim 8 is now amended to be dependent upon Claim 1 and states the skirt further includes a plurality of gussets that extend at an angle from a lower portion of the skirt upwardly into an adjacent bottom portion of the locking bead. The amended language of Claim 8 is supported by Figs. 4 and 10, gussets 42 and 42b, and paragraph 0041 of the specification. New Claims 13 to 17 are introduced. Support for new Claim 13 can be found at paragraphs 0009, 0033 and 0049 of the specification. Support for new Claims 14 to 16 can be found at paragraph 0058 and Figs. 5, 6 and 7 of the specification. Support for new Claim 17 can be found at paragraphs 0059 and Figs. 5, 6, and 7 of the specification.

CLAIM REJECTIONS UNDER 35 USC § 102

In the Office Action of May 19, 2010, Claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,700,860 to Li. The Li reference is cited as anticipating Claim 1 by teaching a closure comprising a snap bead (19), and a resilient liner 14a.

Under MPEP §2131, to anticipate a claim, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Applicants respectfully submit that the above reference does not teach or suggest every element of the claims and therefore the requirements of 35 U.S.C. §102(b) have not been met.

The Li reference teaches and discloses a closure 10 comprising a cap 16, a skirt 17, a bead 19, and a liner. Li at Column 2, lines 27 to 35 teaches that its liner is comprised of:

"a sealing gasket 25 that is cast in situ in the groove defined by the annular bead 18 on the inner surface of the base wall 16 and peripheral skirt 17. The material of the gasket is, for example, a plastisol which is cured after being cast in place. During the application of the liquid plastisol to the closure, the bead 19 on the skirt 17 functions to limit the flow of the gasket material so that the

resultant gasket has a portion extending along the skirt 17 to the bead 19 as shown in FIG. 2." {emphasis added}

Thus, the bead 19 functions to limit the flow of the plastisol liner gasket material so that the liner has a portion that extends along the skirt to the bead 19. The Li sealing gasket 25 after cure – the "resultant gasket" – has the liner portion extending along the skirt to the bead 19. That portion is taught **to be in contact with a vertical or side portion 14a of container bead 14**. Li at Column 2 lines 38 to discusses the Li closure when snap fitted over a container and states:

"The closure 10 is then forced axially onto the container 11, the bead 22 snapping over the bead 15 and the bead 19 of the closure snapping over the bead 14 of the container 11. The force resulting from **the engagement of the bead 19 over the bead 14 displaces or deforms the gasket 25 to the configuration as shown in FIG. 4 wherein the surface 13 and vertical or side portion 14a of bead 14 are in contact with the sealing gasket 25.**"
{emphasis added}

The Li reference therefore does not teach or suggest every element of Applicants' independent Claim 1 as currently amended which defines its liner as **having an arcuate inner surface, a lower portion of the arcuate inner surface extending radially inward allowing the arcuate surface to extend inwardly below the container neck crown when the closure is applied to the container.**

CLAIM REJECTIONS UNDER 35 USC § 103

Claim 1 was also rejected under 35 USC 103(a) as being unpatentable over U.S. Patent 5,957,316 to Hidding in view of the Li reference. Claims 2, 3, 6, 7, 8, were rejected under 35 USC 103(a) as being unpatentable over Hidding in view of Li as previously applied and further in view of U.S. Patent 5,687,865 to Adams. Claims 4 and 5 were rejected under 35 USC 103(a) as being

unpatentable over Hidding in view of Li and Adams as previously applied and further in view of U.S. Patent 6,568,563 to Ma. Claims 9 to 12 were apparently rejected under 35 USC 103(a) as being unpatentable over Hidding in view of Li as previously applied and further in view of U.S. Patent 3,985,255 to Blair.

It is respectfully submitted that the current amendments to Applicants' independent Claim 1 has rendered moot the application of the combined art references cited under 35 USC 103(a), all of which apply the liner / seal of Li. Applicants however respectfully traverse the stated rejections as the same might be attempted to be applied to currently amended independent Claim 1 and the remaining pending Claims directly or indirectly dependent thereon, including new Claim 13 to 17.

The structural elements not found in the foregoing combination of references include the elements discussed above with respect to currently amended independent Claim 1. More specifically, the main reference Li, and the additional references of Hidding, Adams, and Blair as they are combined in the present Office Action, do not teach, disclose, or re-create Applicants' independent Claim 1 resilient seal liner having an arcuate inner surface, a lower portion of the arcuate inner surface extending radially inward allowing the arcuate surface to extend inwardly below the container neck crown when said closure is applied to the container. The Office Action at page 3 paragraph 5 cites that the combination provides "a radial inner edge of the seal" that "is arcuate in the horizontal plane, as it is annular". Yet, such does not re-create Applicants' foregoing liner structure as currently amended.

Further, Applicants' liner as set forth in currently amended Claim 1 provides a composite lined closure that inhibits removal of the closure from a container neck once it has been applied, prevents rotational and axial motion of the closure with respect to the container neck, and provides an improved radial seal against the sides of the container neck. Such beneficial features are taught

by specification paragraphs 0005, 0006, 0034, 0039, 0040 and are advantageous, particularly over foam liners. Such beneficial features are evidence of inventive step / non-obviousness.

For any of these reasons, the aforementioned features cannot reasonable be said to be present in any of the asserted combination as combined. The failure of an asserted combination to teach or suggest each and every feature of a claim remains fatal to an obviousness rejection under 35 U.S.C. § 103, despite any recent revision to the Manual of Patent Examining Procedure (MPEP).

Section 2143.03 of the MPEP requires the “consideration” of every claim feature in an obviousness determination. To render the claims unpatentable, however, the Office must do more than merely “consider” each and every feature for these claims. Instead, the asserted combination of references must also teach or suggest *each and every claim feature*. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) (emphasis added) (to establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art). Also, Applicants respectfully direct attention to MPEP § 2143, the instructions of which buttress the conclusion that obviousness requires at least a suggestion of all of the features of a claim, since the Supreme Court in *KSR Int’l v. Teleflex Inc.* stated that “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

In sum, it remains well-settled law that obviousness requires at least a suggestion of all of the features in a claim. See *In re Wada and Murphy*, citing *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) and *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

With respect to all pending Claims directly or indirectly dependent upon currently amended independent Claim 1, including new Claims 13 to 17, while Applicants reserve the right to submit arguments to the specific patentability of any of these claims separate and apart from the independent Claim 1 to which they depend, Applicants requests reconsideration based on their dependency on allowable independent Claim 1. Reconsideration of the Claims as amended and newly presented is therefore requested.

CONCLUSION

For at least the foregoing reasons, Applicants believe Claims 1 - 12 and new Claims 13 to 17 are in condition for allowance. Based on the prior art relied upon, Applicants have traversed the rejections in accordance with the U.S. Patent Laws and Rules governing these rejections. It is submitted that the application is now in condition for allowance and an early and favorable action to that end is requested. If any questions or issues remain, the resolution of which the Examiner feels would be advanced by a telephonic conference with Applicants' attorney, please contact the undersigned at the telephone number noted below.

Respectfully submitted,

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